

MINUTES
JOINT PUBLIC HEARING
HILLSBOROUGH TOWN BOARD AND PLANNING BOARD
April 25, 2006

MEMBERS PRESENT: Mayor Pro Tem Frances Dancy, Mike Gering, Eric Hallman, Brian Lowen, Evelyn Lloyd, Planning Board Chair Matthew Farrelly, Jim Boericke, Tom Campanella, Edna Ellis, Neil Jones, Eric Oliver, Dave Remington, Mayor Tom Stevens.

STAFF: Margaret Hauth, Robert Hornik

PUBLIC: Rob Wilson, Adam Ashbaugh, Bob Brady, Bud Doughton, Bill Mann, Tom Stark, Ed Davenport, Carl Sain, Marie Holmes, Bill Crowther, Rob Maitland,

ITEM #1: **Call to order and confirmation of quorum.**
Ms. Dancy called the Public Hearing to order and turned the hearing over to Mr. Farrelly.

ITEM #2: **Annexation/Rezoning/Special Use Permit** to authorize Ashton Hall. The hearing is open to address property boundary issues only (TMBL 4.37.C.21 and 4.40.B.1).
Mr. Farrelly introduced the item for discussion and reminded those in attendance that the item was open for addressing boundary issues only and that speakers must be sworn in. Ms. Hauth advised everyone that the sign-in sheet was at the podium as was a written copy of the oath to be read by those who wished to speak.

Ms. Hauth explained that the item was a continuation hearing on the Ashton Hall project which is a combination of the annexation, zoning, and master plan. The remaining issue is a property boundary issue. Letters were included in the member packets.

Mr. Smyre, principle planner for Ashton Hall, approached the podium and introduced a number of people in attendance that represented the applicants. He stated that it had been more than a year since the application process had been begun with a letter of interest. The application had been submitted in June, and they had proceeded through a number of public hearings. Boundary issues had been raised in the first two public hearings in July and October. He added that in the October 6th hearing, one of the property owners had expressed the intention of having a surveyor in three weeks time. At the October 25th hearing, the public survey submitted with the application was determined to be an accurate representation of the property boundaries by a peer review. It was at that public hearing that the joint boards closed the public hearing for all matters except boundary issues.

Mr. Smyre continued to state that the first hearing on boundary issues only had been held in January. At that point one of the property owners had retained legal counsel, Mr. Stark. It was noted at that meeting that it was the intent of the family to retain a third surveyor to review the work, particularly the southern edge which was in dispute. This was to have been completed by the time of the February workshop. The second public hearing on boundary issues was held in February at which time Mr. Smyre had submitted a letter from the third surveyor, but also at that meeting in February that both sides requested additional time to discuss the boundary issue and encroachments.

Mr. Smyre also stated that at the current time, 13 months following the initial meeting and following 6 public hearings, the applicant had submitted two letters including one from Mr. Byron Latil, a registered land surveyor, and Withers and Ravenel, documenting the oral testimony given earlier that the original survey was accurate as to boundaries. He noted for the record that the applicant had submitted a survey performed by a registered land surveyor. They have had two peer reviews by licensed registered land surveyors of the original work. Both oral and written testimony had been received by the boards about the accuracy of the original work. At this point the applicant believes it has submitted more than sufficient evidence into the record to document the accuracy of the original survey, furthermore they had heard no credible evidence to the contrary that there is reason to delay, and as a due process issue, the applicant is requesting that the boundary issue series of public hearings be closed and that they move on to deliberations.

After Mr. Farrelly called for questions from the boards, Mr. Gering asked about a statement in the survey report that positions were "generally consistent" with the original plat. He asked the meaning of "generally consistent" and what the margin of error was. Mr. Smyre responded that "generally consistent" was a phrase commonly used in this type of work and asked Mr. Latil to speak to the question.

(Mr. Hornik noted for those present that anyone who had been sworn previously to speak to an issue would be considered to remain sworn, and anyone speaking for the first time or giving new information would need to take the oath.)

Mr. Latil took the oath and stated that although he could not tell the boards specifically what the differences in distances were but old highways which had been remade since the 1925 and 1929 surveys typically were shortened to meet what the current travel lanes would be. Mr. Gering asked if Mr. Latil could characterize the margin of error that's being allowed and if it included any of the disputed property. Mr. Latil answered that it had no impact where the property overlaps.

Ms. Ellis asked why it took so long to notify the neighbors of a problem when the original survey had been done in 2000. Mr. Smyre responded that there is no obligation to notify the neighbors of the results of the survey. He also noted that the current applicant's involvement began in 2005 and they did discuss the issue with the adjoining owners when they became aware of it. Ms. Ellis added that copies of the letters had been sent to the mayor and town commissioners and asked if other parties involved in the issued, i.e., the neighbors, had received copies of the letters. Mr. Smyre said he was not aware of whether they had been supplied and reiterated that there was not an obligation to do so. Also he commented that the neighbors were fully aware of what the applicant's position is, and it was not a surprise to them.

Mr. Farrelly called for other questions from the commissioners for the applicant. There being none, the members of the public who were signed up to speak were called forward.

Mr. Carl Sain spoke saying that he had a deed for the overlap property. He commented that no one had seen the applicant's deed. He said that he never knew that they were trying to take 22 feet of his property until three or four months ago. No information has ever been offered, but he had inquired about the reason for two sets of stakes in his yard. Having not been informed when the discrepancies were found, he felt that now everything was being rushed. He has a deed from August of 1929 and felt it was not right to put pressure on the neighbors to hurry when the owners had five years to let somebody know. Also he stated that the surveyors had told him that

they knew all the properties were all shifted and they didn't know how they would straighten it up. Even Ed Davenport said he knew there were discrepancies with the boundaries. He asked who was responsible for getting it straightened out.

Ms. Lloyd asked if Mr. Sain had a map which shows where his property is in relation to the property. Mr. Sain answered that he did have a map and showed the members the disputed footage and where the 22 feet in dispute were and the wedge of 446 feet. Ms. Marie Holmes came forward and stated that where Mr. Sain's property stops, the Holmes' property begins and the line comes up into their property. When the tax department runs the lines on the computer, the Holmes' are losing part of the Part No. 10 plat. She then turned the podium over to her attorneys, Mr. Stark and Mr. Maitland.

Mr. Farrelly asked Mr. Stark and Mr. Maitlin to wait until after those who had signed up and called for Mr. Crowther to come forward.

Mr. Crowther took the oath, signed in, and stated that he was an adjacent property owner. He said that he was not disputing a boundary issue but an ownership issue and would step down if it was not appropriate at the time. Mr. Hornik commented that he was unsure and asked Mr. Crowther to continue. Mr. Crowther continued that Classic American Homes was one of the properties behind the development and that it is platted that there is a 20-foot road reservation or easement back to their property. They had been working with the developer and owners to move the easement so that some type of pedestrian trail could be located back to their walking trails on the river. He wanted to report that they were working in a positive way with the owners and the planner to make sure that the ownership of the easement is moved into the development plans so that there will be some pedestrian access from US 70 back to the river. Mr. Hornik asked to clarify that the issue was that there is an existing easement that Mr. Crowther was negotiating to relocate. Mr. Crowther confirmed that it was a 20-foot road reservation and they were working in a positive manner to get public access from the sportsplex area to the river and the walk along the river.

Mr. Stark introduced himself as representing the Holmeses. He stated that they had been trying to solve some of the title issues on the property. The primary contention from his clients was that Highway 70 was somehow shifted when it was turned into Highway 70 from the preceding concrete road. Most recently they had looked at aerial photos that might show some evidence of the relocation of the road and disturbance of the land. Unfortunately the aerial photos in the State archives were later than the roadwork was done and nothing definitive could be obtained from it. He stated that what he had suggested by letter authorized on the day of the meeting is that the usage patterns be looked at because it's an adverse possession issue that goes outside of the lines drawn on the map. There is an area of land around the Holmes' property that has been in use for a long period of time. Without trying to solve further the survey of the lines, they were suggesting that the usage lines be looked at as a line for a property boundary agreement. That suggestion had gone to Mr. Doughton only earlier in the afternoon, so he likely had not had an opportunity to review it. Mr. Stark further stated that he knew a number of lines were rotated or seemed out of place on the properties. The question remained of where the whole property lies, so they were suggesting that usage lines be established. Review of the aerial photos indicate cleared areas and fenced lines in the edge of the woods that establish one of the other historical usage lines. He said those would be the lines that they would look to to resolve the property line dispute. Those are not surveyed at this point. The neighbors had suggested to the owners that they meet and suggested again that they meet and flag those lines and have them surveyed and see where they stand.

Mr. Hornik asked if Mr. Stark had any evidence, testimony, indication from a licensed land surveyor that would substantiate the contentions that the Sains and Holmeses had made since October about the location or disputed location of the property line. He noted that it had been represented in October by Mr. Stark's clients that they would present surveyor's testimony, statement, plan, something substantiating their claim, but that had not been seen. Further, the applicant had submitted two or three surveyor's statements to the fact that what they are telling the commission is the line is the line. Mr. Stark informed Mr. Hornik that there is not a survey in existence of the usage lines at this time. He added that they are apparent on the ground and apparent on the aerial photos, at least the sideline is. The back line goes into the woods and may not show up quite as well on the aerial photos. He said he was authorized at that point to put forth that method of resolution and he had done so to the owners. They did not at that point have a survey of the land, but that was the next step.

Mr. Maitland took the oath, signed in, and introduced himself as a real estate attorney from Chapel Hill. At Ms. Holmes' request he had reviewed the work done by Mr. Stark's office to find a way to help solve the problem. He had been retained about three weeks prior to the meeting. As he saw the problem it was that they were looking at about 100 years of title work, back to the time when deeds were handwritten, notes written in the margins, and it is hard to tell what was going on. The metes and bounds measurements were identified by the location of trees and rocks, et cetera, and they were dealing with those types of things over almost 100 years. He said that what is known is that there are aerial photos that show that the Holmeses and Mr. Sain have been using the land for over 50 years which gives them a claim to the property just on usage. They also have claims to the property through family ownership over a number of years, decades of time, and they have been trying to piece that together.

Mr. Stark's office had gone to great lengths, gone to Raleigh to pull old highway records. There are problems that a lot of the lines were drawn "so many feet from," and there are references to old Highway 10, the old Fish Dam Road, and people can't find those things. They've tried to get records of where those things were paved over so they can try to figure it out. Twenty-two feet here, 10 feet there, 15 feet there, in the old days was not a lot of money, but in these days that starts to add up.

Mr. Maitland sympathized with the developers, who want to get the issue resolved, but only 100 days had passed since the first boundary-only hearing, and Mr. Maitland and his clients were dealing with 100 years of title work. He did not feel the Holmeses were trying to be obstructionists, they were just trying to get it right, and it takes time to do that. Addressing Ms. Ellis, he stated that he also felt a lot of it might be about communication, and although there may be no obligation to send people copies of information, it might have helped to move things along. He felt the goal of the Holmeses and Mr. Sain was to make the Ashton Hall project work, but they don't want it on their property unless they're compensated for it, and they want it done in such a way that it doesn't impact their use of the property or perhaps there's some way to work it out where Ashton Hall can buy all of the property.

From Mr. Stark's conversations with him, Mr. Maitland felt the developers had been receptive to trying to work with him, but it's something that just can't always get done in 90 days. He felt there was enough confusion on the documents to warrant taking the time to examine the issues. It is not a matter of pulling up electronic records. One must go in and dig through the books. He said he would hope they could find a way to buy a little more time to help everyone work together and get things resolved. The offer made today by Mr. Stark might help, but the

developers hadn't had time to look at it to see if it might be acceptable to them. He asked that some time be given to get the issue resolved so that it did not lead to lawsuits.

Mr. Campanella asked what the earliest aerial photos that could be found in the State archives were. Mr. Stark answered that they were from the 50s, but given the fact that the road was relocated in the 20s, they could not draw any conclusive information from what they saw. That was the reason they decided to look at the usage patterns to resolve the boundary issues. Mr. Maitland added that the aerial photos ran very close to the lines Ms. Holmes and Mr. Sain had drawn and that their deeds show. Mr. Campanella agreed that those were the earliest that he knew of of the area. Mr. Stark added that DOT had done other parts of the state earlier, but Orange County apparently had not been done until later. They also had not found any in the national databases. Mr. Maitland stated that his review of the work done by Mr. Stark and his clients was accurate, but there was a great deal of information to go through, and there are a lot of contradictory documents.

Mr. Jones asked what kind of time line Mr. Maitland was referring to and what sort of plan was in place. Mr. Maitland responded that the time line was somewhat dependent on how quickly they could get a surveyor on the job and the expenses as the Holmes are not in the same position as the developers to pay for such things and to get on the top of the list. However, they felt 90 days was a reasonable time frame. Mr. Stark added that it could be even faster if they could get the surveyor out to the line quickly and it could be agreed upon.

Mr. Farrelly asked again about why the survey work was not done earlier as what he seemed to be hearing was that the homeowners are not convinced that the survey would necessarily be helpful and that's why they were looking at the other evidence. Mr. Maitland stated that he had trouble reconciling why the Holmeses paid taxes on 3.7 acres of land and then suddenly one year their tax bill was for 3 acres. He did not know why that was why the county would change the amount of land. That must be researched as it is not an insignificant amount of land. Mr. Hornik asked if they knew which was right and which was wrong.

Mr. Stark added that the family lore was that the parcel was 6 acres and the land seemed to continue to shrink. When the survey was done, it was closer to their homes than they thought it should be. The process of digging through the titles then began. The titles have some anomalies in them. The neighbors had tried to resolve those. They worked with the Holmeses and personally walked the land. There is evidence that points in different directions. He had been looking for evidence of the old Fish Dam Road which runs very close to the 70 track. There is another road track coming off the side of that. They knew the old Fish Dam Road came north of Highway 10 that became 70. They looked to see if when 70 was constructed they had shifted some to the south. Nothing conclusive has been picked up on that, but they did notice a very clear usage pattern.

Even in the earliest aerial photos they had looked at there was usage outside of what is shown on the maps as the boundaries. So there has been an "open and notorious continuous user" which would constitute an adverse possession and would affect what the actual properties that were used by the Holmes and their predecessors entitled. Mr. Stark stated that he had recommended that the neighbors make an offer to that effect and had gotten authority that day to forward that offer. They think that that's the correct way to resolve it at this point. Mr. Maitland continued that the Holmeses are reluctant to go that way, it's a legal recourse, because they believe they own that land and that they have the documents to show it.

Looking at the survey, if you go to a certain point to start measuring things, the survey's going to show one thing. The family's question is, is the survey that was done in 2000 starting at the right points or are they off by 22 feet to begin with? They could easily be when you're talking about, "starting at the red oak." There is so much historical data that somebody could take their best shot at doing a survey today and it won't line up to what the survey might have shown 50 years ago as all the stuff is rooted back in the '29 deeds.

Mr. Farrelly asked if it wasn't true that it would be helpful to have a licensed surveyor with those concerns in mind come back with the same kind of evidence. Mr. Maitland responded that they needed to find that starting point for them. Ms. Stark added that surveying the usage lines absolutely would be the next step either by agreement of the parties or by the Holmes if they are able.

Mr. Hornik reminded the boards that it was not their job or jurisdiction to settle a boundary dispute. The boards' job is to judge the evidence presented, and the standard is the substantial competent evidence. The decision, when it is time for a decision, must be based on the substantial, competent evidence in the record. At the time there was no competent evidence by a surveyor that stands up against what had been presented from two different surveyors on behalf of the applicant. He noted that in terms of the time frame, 90 days, 60 days--how long has it been--his notes show that in October at the public hearing, that's when Ms. Holmes had given him her plans and some of the deeds. The testimony was that in a month's time they planned to have a surveyor who could verify their claim. There still was no surveyor, and at some time there needed to be closure. The boards do not decide a boundary dispute. They decide the application presented based on the evidence that's in the record.

Mr. Stark commented that the surveys the members had were substantial evidence. They were surveys of the property lines drawn from the deeds. No survey had attempted to locate any usage lines that might be demonstrated by an adverse possession. All the evidence before the boards was competent. There is certainly some weight given to a registered land surveyor for putting his stamp on a survey, and the surveys show where they think the lines are drawn from the deeds and making their calculations and making their best opinion of where the lines ought to be. What they had tried to do in looking at the title work was to see if they could see if the lines were in a different place. They felt like because the boundary was tied to the road and they didn't get anything conclusive on the road, the only thing to do then was to look at usage lines. They had gotten authority that date to advance that approach. They believe the usage lines can be surveyed reasonably quickly and establish what those lines are. They sent a letter to the sellers and suggested that. They think that will be dispositive based on their analysis of the record and their walking the land.

He further stated that it was his understanding that it was inappropriate for the boards to approve a project that encompasses somebody's land who didn't sign off on the application. So the rub for the board is that to the extent that there is an adverse possession that goes into the area that the applicant says is "my land," and there's a debate about whether it is or not, it would be helpful to the boards to have that resolved so that they are not acting on land that may not belong to the applicant.

Mr. Campanella suggested that there was living in the community the foremost expert in historical highway and road patterns in the region, Tom Magnuson. He is the head of an organization called The Trading Path Organization. He felt he would know very much about the

Fish Dam Road and might be of help in establishing the historic road patterns. Mr. Maitland thanked Mr. Campanella for the idea.

Mr. Smyre summed up the discussion by saying that he understood the families' confusion and that they were not surveyors. He added that three licensed surveyors had looked at the land and come to the same conclusion which he felt was powerful evidence. He agreed that the aerial photos would document the extent of the encroachment that's going on. He referred to a phenomenon called vacant lot creep where someone over years can cut across a line. He felt sure also that usage patterns could be documented, and they may or may not have an adverse claim. He thought he was hearing a claim that the property line is not where the usage patterns are. The applicant has presented credible evidence. He felt there were a lot of smoke screens and delay going on and it isn't in the purview of the boards to resolve the boundary issues. The applicant is standing behind the surveyed boundary and wants to move forward with the project. He stated that there had been six public hearings on the application, and that was enough.

Mr. Farrelly invited Mr. Hornik's input. Mr. Hornik advised that the option was to close the public hearing. Mr. Gering asked for additional clarification on closing the public hearing, in that if they closed the public hearing and the claim went forward with usage patterns where would that leave the town in terms of being a party to a lawsuit. Mr. Hornik responded that there were two issues. Someone could challenge the decision that the board ultimately makes and make the property line dispute the issue of the challenge. That challenge is going to be decided and determined based on the competent evidence in the record before the board which, he said, the only competent evidence before the board is that the line is where the applicant says it is. The way it really ought to be disputed is through legal actions in the courts between the property owners and the neighbors. It's a boundary line dispute between the Holmeses and the Sains and the Pou Foundation, and ultimately boundary line disputes of that nature get settled by courts, not by town boards. The boards' standard is to judge the evidence that's presented to it and make its decision on the application based on the competent evidence that's in the record. To qualify, "competent evidence in the record" is evidence that those who are qualified to give it, the licensed land surveyors, have provided. The board may say they will give the neighbors one last shot to produce some kind of competent evidence or the board can say it's done enough and close the hearing.

Mr. Gering asked if the board went forward, would it be a special case because the boundary dispute will ultimately be a boundary that is claimed as a corporate limit in the town of Hillsborough, and if they reach some agreement later, what happens to it. Mr. Hornik responded that in the annexation phase, the corporate limit will be the boundary that is described in the narrative legal description from the area being annexed. The boundary could end up running 22 feet into someone else's property and that happens frequently enough. Corporate limits don't always follow property lines. The issue before the boards won't have any impact on where the corporate limit is if the boards approve the annexation.

Ms. Lloyd commented that since the property owners had found a lawyer who finally makes sense to them and who is willing to work on their behalf and since there would be a special meeting to take up the delayed items on the current agenda, perhaps this item could be added there and that would make it go to July. She said that she couldn't see why that length of time would matter one way or another. She felt the issue would stick in the back of her mind because it's historic property and if she had to make a decision and make up her mind, she didn't know that she would make a decision that the developer would like. She would like to have that chance and she felt it was only fair to the owner because they had tried to find somebody who

could help them. Now they seem to have found somebody who can help them. She felt allowing the time would be fair if she were in their position. Mr. Hornik advised that the boards at their current meeting had discretion about whether they wanted to continue the hearing on the issue or close the hearing.

Ms. Ellis commented that she had nothing further to say about the property line dispute, but before the Town Board makes its decision but she felt there should be some more discussion about this besides boundaries because when she went to the workshop in February she heard some information from Mr. Smyre and Mr. Wilson that she did not think the Planning Board heard. Mr. Farrelly reminded the members that the topic for the current meeting was the boundaries. Ms. Ellis added that when it came to the Town Board, there were other issues that would have to be discussed.

Mr. Remington stated that in January the board had been told that the parties were working on a compromise so that the project could go forward. The February workshop was the time when the compromise was to have been worked out, but additional time had been requested. What had occurred was that there was no agreement and the issue was no closer to any sort of compromise although the boards were being told that eventually the parties will get there. He said he was getting a little tired of hearing the issue rehashed and not being any closer to the compromise.

Mr. Gering noted that one of the things the Town Attorney had pointed out to him was becoming clearer; that being that if the public hearing was closed and a decision made on the evidence presented, it does not preclude the parties from continuing their dispute or resolving it later. He was not sure that giving more time would result in a better outcome for anyone.

Mr. Oliver agreed with Mr. Gering that there would not be a resolution whether the public hearing was closed or even rejected the application. The boundary dispute still would not be resolved. The boards could not provide relief on the boundary issue. He felt they had seen enough.

MOTION: Mr. Oliver made a motion that the public hearing be closed on the annexation/rezoning/special use permit for Ashton Hall.

SECOND: Mr. Campanella.

VOTE: 11 in favor; 2 opposed (Commissioners Lloyd and Hallman opposed).

ITEM #3: **Master Plan modification** for Waterstone to designate pod 6 as single family development and add residential units to pods 15, 18, and 22.

Ms. Hauth advised that the members had a letter in their agenda packets from the applicant saying that they were not prepared to address the economic impact of the proposal and asking for the item to be continued to July. The applicant was not present to speak.

Mr. Smyre came forward as a representative of the adjoining property owner who had come from South Carolina for the hearing. He stated that he had conferred with his client and felt the best course of action would be not to speak at the current meeting. They continue to have concerns and will continue to monitor the issue and will return when the applicant is present.

Ms. Hauth stated that since the request would be continued to the meeting in July, it would be appropriate for the boards to pass a motion to reschedule to some date specific. Then they could forego the notices unless the board wished for her to do them.

Mr. Farrelly asked if the date specific would be the July meeting, and Ms. Hauth responded that it would be and would be July 25th.

MOTION: Mr. Gering made a motion that the item be deferred to the July 25th.
SECOND: Mr. Lowen
VOTE: Unanimously approved.

ITEM #4: **Rezoning Request** from Dwight Walters to rezone 1.67 acres on St. Mary's Road from R-20 to General Commercial (TMBL 4.21.C.7).

Ms. Hauth advised that the members had a letter from Doug Hargrave on behalf of the applicant asking that the item be continued as Mr. Hargrave was unable to be present to represent his client. Ms. Hauth noted that there were a number of people present in the audience to speak on the item as there was a great deal of interest. It was at the boards' discretion whether to continue the item. The item was voluntarily continued from January. The applicant had never presented his case and no testimony had been accepted on the item. It is a general purpose rezoning, so there is not sworn testimony. A protest petition was submitted in January, but it was not valid. It did not meet the criteria as one of the property owners was a spouse pair and one spouse signed for both people which is not sufficient.

Mr. Farrelly asked if comments made at the current meeting would have to be repeated. Ms. Hauth responded that along with Mr. Hargrave's letter, the board members had copies of a number of letters that were submitted from other property owners. A number of comments had been received recently from neighboring property owners. In response to an inquiry about hearing the people who had come out, Ms. Hauth stated that the board could hear them.

Mr. Gering asked if procedurally since there was the issue of the protest petition, what mechanism was in place that would allow the petitioners to resubmit the petition. Mr. Hornik answered he had posed the question to David Owens of the School of Government, and if notice were published again, another protest petition probably could be submitted. If notice is not published again, then maybe there is not another chance to file a protest petition. Mr. Owens seemed to think that the right to file a protest petition closely tracked with if notice has been published for a public hearing, then there's a new right to file a protest petition. Mr. Gering then asked if there was any other mechanism in place to "reset the clock?" Mr. Hornik responded that the boards could deny the application and the applicant could submit a new application. Mr. Hallman stated that they could close the public hearing and that would be an option. Mr. Gering asked if that would be a better option, and Mr. Hornik said that he felt that might be a better option to do that and publish a new hearing and start the clock running all over again.

Ms. Ellis stated that she had checked the land records and had them pull up the surrounding territory. She asked Ms. Hauth to distribute copies of the lots as it highlighted all the nice homes around the property. The tract in front of the property had been zoned commercial in the past but it had been discovered that it could not be built upon because the highway right-of-way takes most of the lot.

Mr. Oliver asked if any testimony given at the current meeting could be carried over to the new public hearing if the hearing was closed. Mr. Hornik said that it would really be better to have fresh testimony and the new public hearing. Mr. Oliver stated that he knew the people present who had been waiting through the meeting would like their petition to be entered. Mr. Hornik said that the balance that needed to be struck was trying to accommodate those who were in attendance so that they could be heard but at the same time having to republish with a new public hearing which would allow another opportunity for a valid protest petition to be

submitted. That would then impose on the board a supermajority vote requirement if it does want to amend the zoning, and that would be advantageous to the neighboring property owners.

Mayor Stevens expressed his understanding that the folks who signed the petition thought they had a complete protest petition and a technicality made it invalid. Mr. Hornik added that the standard for protest petitions is that they must be signed by all the owners of the property lying within the adjacent area. That means that if you have a property that's owned in a joint tenancy or a tenancy by the entirety or as tenants in common or by more than one owner, all the title owners of that particular parcel have to sign the petition in order for the petition to be valid. What happened in this case is that only one spouse signed for both, thinking that that was acceptable, and legally it's not which is why the petition did not qualify. Mayor Stevens continued that given the fact that the applicant had wanted to be heard later and the neighborhood wants to get the things that they need together, arranging it so they all could start over was something he encouraged the boards to do. Mr. Hornik added that he felt it was a fair thing to do but also since the old notice was a bit stale; it would be procedurally cleaner for the boards to schedule a new public hearing and start things over again and establish new time lines.

MOTION: Mr. Gering made a motion to close the public hearing on the item and direct staff that any further scheduling of the item would not be as a continued item. A new application will not be required but a new notice will be made in terms of the public hearing.

SECOND: Mr. Hallman.

VOTE: Unanimously approved.

ITEM #5: Discussion of when to schedule a hearing on delayed items.

Ms. Hauth stated that there were representatives for some of the delayed items who were present to speak to the concerns they had caused by the delay of staff getting the ad wrong in the newspaper. She accepted responsibility for the mistake and said she would take steps to make sure it didn't happen again. Ms. Hauth further advised the boards that they could call a hearing within two weeks and suggested consideration of June 5th which would be the first Monday in June. Mr. Lowen stated that he would like to see that happen.

MOTION: Mr. Lowen made a motion that a special public hearing on delayed items be set for June 5, 2006 at 7:00 p.m.

SECOND: Mr. Boericke

VOTE: Unanimously approved.

Mr. Farrelly called for a motion to adjourn the Planning Board portion of the meeting.

MOTION: Mr. Gering moved to adjourn the meeting.

SECOND: Ms Dancy

VOTE: Unanimously approved.

Ms. Dancy adjourned the public hearing at 8:14 p.m.

Respectfully submitted,

Margaret Hauth, Secretary